IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

FRIDAY, THE THIRD DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT APPEAL NO : 205 of 2002

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 27/09/2001 in W.P.NO: 18372 OF 2001 on the file of the High Court.)

Between:

Shri.T.Jogaram W/o.Late Sri.Topa
R/o.H.No.7-1-57/2A/52 Shanmukha Apartmants
Ameerpet Hyderabad

..... APPELLANT

AND

1 Bank of India
rep.by its Chairman and Managing Director Express Towers, Nariman Point Mumbai
2 The Disciplinary Authority and Asst.General Manager Bank of India
PTI Buildings AC Guards Hyderabad
3 The General Manager (HRD) Bank of India
Express Towers, Nariman Point Mumbai
4 The Zonal Manager Bank of India
PTI Buildings,AC Guards Hyderabad
5 Sri.C.Joseph Raj Zonal Manager
Chennai Zone,Bank of India Chennai

.....RESPONDENT(S)

Counsel for the Appellant: MR.M.SURENDER RAO

Counsel for the Respondent No.: MR.DEEPAK BHATTACHARJEE

The Court made the following :

JUDGMENT: (Per **B.Seshasayana Reddy, J**)

1. The unsuccessful delinquent being aggrieved by the order of the learned single Judge dated 27-09-2001 passed in W.P.No.18372 of 2001 has preferred this Writ Appeal.

2. The learned single Judge by the order impugned in the writ appeal has upheld the disciplinary action taken by the management of Bank of India in imposing the penalty of compulsory retirement from service w.e.f.14-7-2001 as a disciplinary measure.

3. Before dealing with the contentions raised in this Writ Appeal, it will be beneficial to have a glimpse of relevant facts.

The appellant/delinquent was appointed as a clerk in the respondents-Bank in the year 1982. He was promoted as Junior Management Officer Scale-I in the year 1993 and was posted to Tamilnadu initially. After two years he was transferred to Hyderabad. He was working as an Officer at Secunderabad Branch during the period from 6-1-96 to 30-3-98. He was on deputation to Visakhapatnam from 22.2.97 to 25.2.97 for mobilization of shares. He claimed traveling expenses, lodging and boarding charges and halting allowance for the said period. It was found that the amounts claimed by him were inflated and therefore a charge memo was issued to him on 26.3.99. The charge memo read as follows:

> *" During your tenure as Staff Officer of Bank's Secunderabad branch during the period from 6.1.96 to 30.3.98, the following irregularities are alleged to*

have been committed by you:

> *Article I: You were on deputation to Visakhapatnam Branch from 22.2.1997 to 25.2.1997 for which you submitted the TA bill on 27th February, 1997 claiming the fabricated traveling expenses, which are far in excess of the normal conveyance charges. You also claimed and submitted a lodging bill of Lodge Brindavan for Rs.500/- for two days whereas the room rent paid by you in the said lodge Brindavan for 2 days was Rs.104/-. Thus, you submitted a false bill. You had also arranged to incorporate boarding charges of Rs.300/- in the bill issued by Lodge Brindavan although no boarding facilities are available in the said lodge. You have also claimed halting allowance of Rs.350/- which is in excess of the entitlement."*

The delinquent officer submitted explanation denying the charges. The disciplinary authority thereupon appointed Chief Regional Manager, MICR Centre, Hyderabad as Enquiry Officer. The enquiry was commenced on 22.9.99 and the same was concluded on 9-12-99. The management examined three witnesses and exhibited eight documents to prove the accusations made against the appellant/delinquent. The appellant/delinquent examined two witnesses and marked 70 documents on his behalf. The Enquiry officer submitted his findings on 13.1.2000 holding the delinquent guilty of the charges framed against him. A copy of the enquiry report was furnished to the appellant/delinquent and thereupon written submissions were made by him on 13.3.2001 and 20-3-2001. The disciplinary authority had gone through the Articles of charge, statement of allegations, the enquiry proceedings, written submissions of the appellant/delinquent, the findings of the enquiry authority and accepted the findings of the enquiry authority and imposed the punishment of compulsory retirement from service w.e.f. 14.7.2001.

4. The appellant/ delinquent filed Writ Petition No.14786 of 2001 questioning the order dated 14.7.2001, which came to be disposed of on 20.7.2001 directing the appellant/delinquent to exhaust his alternative statutory remedy by filing an appeal

under Regulation 17 of Bank of India Employees (Discipline and Appeal) Regulations, 1976 and suspended the penalty/ punishment for a period of six weeks. The appellant/ delinquent accordingly filed an appeal before the appellate authority. The appellate authority by order dated 30-8-2001 dismissed the appeal and confirmed the order of the disciplinary authority.

5. Assailing the order of penalty of compulsory retirement from service, the appellant/delinquent filed Writ Petition No.18372 of 2001. The learned single Judge of this Court on hearing counsel for both the parties and on perusing the record did not find any valid ground to interfere with the order of penalty of compulsory retirement from service and accordingly dismissed the writ petition. Hence, this Writ Appeal by the appellant/delinquent.

6. Sri.M.Surender Rao, learned counsel appearing for the appellant/delinquent contends that the findings recorded by the Enquiry Officer cannot be sustained as the enquiry itself was held in utter violation of principles of natural justice. It is also contended that there is no evidence whatever to sustain the charges framed against the appellant/delinquent and therefore the findings of the Enquiry officer are perverse and no reasonable person could have come to these findings on the basis of the evidence brought on record. In elaborating his arguments he took us to the evidence of witnesses examined and also the documents marked on behalf of the management. In support of his submissions he placed reliance on the decisions of Supreme Court in SHER BAHADUR Vs. UNION OF INDIA, KULDEEP SINGH Vs. COMMISSIONER OF POLICE.

7. Sri.Deepak Bhattacharjee, learned counsel appearing for the respondents-Bank

has, on the other hand, contended that the enquiry was held in consonance of the principles of natural justice and that during the course of enquiry full and fair opportunity was given to the appellant/delinquent to defend himself. It was further contended that the evidence adduced on behalf of the management amply proves that the amounts claimed by the appellant/delinquent towards traveling, lodging and boarding charges were inflated. It was also contended that the appellant/delinquent went to the extent of fabricating documents i.e. letter alleged to be given by the manager of Brindavan Lodge, during the enquiry. He further contended that the scope of judicial review in disciplinary proceedings is extremely narrow and limited. The Court cannot, it is contended, re-examine or re-appreciate the evidence as appellate authority and substitute its own conclusion in place of the conclusion arrived at by the Enquiry officer or the disciplinary authority on that evidence. His further submission is that in banking business absolute devotion, diligence, integrity and honesty need to be preserved and maintained by every bank employee and in particular the Bank Officer and if this is not observed, the confidence in the public/depositors would be impaired. In support of his submissions he placed reliance on the following decisions:

1. V.RAMANA V. APSRTC
2. UNION BANK OF INDIA V. VISHWA MOHAN
3. G.SATYANARAYANAMMA V. CANARA BANK, BANGALORE
4. SANCHALAKSHRI V. VIJAYAKUMAR RAGHUVIRPRASAD MEHTA
5. MUNICIPAL COMMITTEE, BAHADURGARH V. KRISHNAN BEHARI
6. STATE OF PUNJAB V. RAM SINGH
7. STATE OF ASSAM V. M.K.DAS
8. SURESH KOSHY V. UNIVERSITY OF KERALA
9. UNION OF INDIA V. COL.J.N.SINHA AND ANOTHER
10. UNION OF INDIA AND OTHERS V. A.NAGAMALLESHWAR RAO
11. STATE OF BANK OF PATIALA V. S.K.SHARMA
12. UNION OF INDIA V. M.E.REDDY

8. It is no doubt true that the High Court under Art. 226 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the Enquiry Officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the Appellate Authority. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictate of the superior authority.

9. In NAND KISHORE V. STATE OF BIHAR it was held that the disciplinary proceedings before a domestic Tribunal are of quasi-judicial character and, therefore, it is necessary that the Tribunal should arrive at its conclusions on the basis of some evidence, that is to say, such evidence which, and, that too, with some degree of definiteness, points to the guilt of the delinquent and does not leave the matter in a suspicious state, as mere suspicion cannot take the place of proof even in domestic enquiries. If, therefore, there is no evidence to sustain the charges framed against the delinquent, he cannot be held to be guilty as in that event, the findings recorded by the Enquiry Officer would be perverse.

10. The findings, recorded in a domestic enquiry, can be characterised as perverse if it is shown that such a finding is not supported by any evidence on record or is not based on the evidence adduced by the parties or no reasonable person could have come to those findings on the basis of that evidence. This principle was laid down

by the Apex Court in STATE OF ANDHRA PRADESH V. SREE RAMA RAO, in which the question was whether the High Court, under Article 226, could interfere with the findings recorded at the departmental enquiry. This decision was followed in CENTRAL BANK OF INDIA V. PRAKASH CHAND JAIN and BHARAT IRON WORKS V. BHAGUBHAI BALUBHAI PATEL. In RAJINDER KUMAR KINDRA V. DELHI ADMINISTRATION THROUGH SECRETARY (LABOUR) it was laid down that where the findings of misconduct are based on no legal evidence and the conclusion is one to which no reasonable man could come, the findings can be rejected as perverse. It was also laid down that where a quasi-judicial Tribunal records findings based on no legal evidence and the findings are his mere ipse dixit or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated.

11. In KULDEEP SINGH Vs. COMMISSIONER OF POLICE the Supreme Court has held that normally the Courts would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of "guilt" is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with.

12. Sri.M.Surender Rao, learned counsel appearing for the appellant/delinquent contends that non-supply of the copy of preliminary enquiry report vitiated the

departmental enquiry and therefore the findings recorded by the Enquiry officer and the disciplinary authority are liable to be set aside. On the other hand, Sri.Deepak Bhattacharjee, learned counsel appearing for the respondents-Bank contends that non- supply of a copy of the preliminary enquiry report would not vitiate the departmental enquiry held against the appellant/delinquent because the same has not been made use in the domestic enquiry and therefore there was no obligation cast on the disciplinary authority to furnish copy of the preliminary report or the evidence collected in the preliminary enquiry to the appellant/delinquent. He placed reliance on the decision of our High Court in CHAIRMAN AND MD, SINGARENI COLLERIES CO.LTD v. B.V.S.PRASAD. The object for holding the preliminary enquiry being the satisfaction of the disciplinary authority, the procedure of enquiry is wholly at the discretion of the disciplinary authority holding the enquiry. After holding preliminary enquiry, the disciplinary authority need not record its satisfaction in writing nor is it required to give any reasons for initiating the regular departmental enquiry. A preliminary enquiry, it is trite, does not result either in exoneration or punishment. Therefore, whatever be the finding in the preliminary enquiry, that will not affect any of the legal rights of the delinquent-employee. It is not necessary for us to dilate this aspect further because this Court has had an occasion to deal with the purpose and nature of the preliminary enquiry and the use of the evidence and material collected in the course of preliminary enquiry in DEPOT MANAGER, APSRTC v. SRI MOHD.ISMAIL. In CHAIRMAN AND MD, SINGARENI COLLERIES CO.LTD v. B.V.S.PRASAD the Division Bench of this Court held that when the documents and evidence collected in the course of preliminary enquiry were not considered or made part of the record, they need not be supplied to the delinquent and non-supply of the said documents does not vitiate the departmental enquiry. In view of the settled position of law, we do not see any substance in the contention of the learned counsel for the appellant/ delinquent that non-supply of a copy of the preliminary enquiry report vitiates a departmental enquiry.

13. In the light of the above principles let us scrutinize the case on hand. The charge memo has been detailed in the aforesaid paras of the judgment. The accusations made against the appellant/delinquent is that he inflated the amounts incurred by him towards traveling, lodging and boarding expenses when he was sent on deputation to Vishakhapatnam for mobilizing shares from 22.2.97 to 25.2.97. It is to be noted that the Presenting Officer made written submissions before the Enquiry Officer wherein he stated that the management relied on substantially on ME6, ME7 and ME8. We deem it appropriate to refer the relevant portion of the written submissions made by the Presenting Officer and it is thus:

" I have produced a total of 8 documents in support of the charges and they were numbered as "M.E.1 to M.E.8". ME1 to ME5 were produced through Sri.M.S.Reddy (MW.1) and ME.6 to ME.8 were produced through Shri.S.H.Joshi (MW.3).

M.E.3, M.E.4 and M.E.5 are receipts issued towards reservation charges and have no bearing in proving the charges. I will not be relying on them to prove the charges against the CSO. The documents on which the management's case relies are ME.1, M.E.2, M.E.6, M.E.7 and M.E.8……."

M.E.1 is the letter submitted by the appellant/delinquent detailing the amounts spent by him. M.E.2 is the bill enclosed to M.E.1. The truth or otherwise of the amounts spent by the appellant/delinquent covered under M.E.1 and M.E.2 are required to be tested with reference to M.E.6, M.E.7 and M.E.8. M.E.1 letter dated 1.11.1999 reads as follows:

" Respected Sir,

As per instructions of our Zonal Officer, I had been to Vizag from 22.2.97 to 25.2.97 morning and all the application along with cheque handed over to our SSI branch Vizag for collection of Rs.1500/- shares. In this connection, I had incurred the following expenditure:

22-2-97 From my house to Secunderabad station

by taxi - 225

23-2-97 4.00 PM from Vizag railway station to

lodge by taxi - 150

From lodge to customer house by taxi - 210

From customer house to lodge by taxi - 210

24-2-97 From lodge to Isukatota Sand Bazar

to collect cheque from customer by taxi - 200

From Sand bazaar to lodge by taxi - 200

From University campus to SSI by taxi - 215

and back to lodge at flat rate

From lodge to Vizag Railway station by taxi - 160

Railway reservation charges - 20

Secunderabad to Vizag

From Vizag to Secunderabad - 20

From Secunderabad Station to my house by taxi - 220

Lodging and boarding ;charges - 800

Halting allowance - 350

ACTUAL EXPENSES 2980

LESS ADVANCE 2000

TO BE PAID **980**

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M.W.1 is Malreddy Sambasiva Reddy, the then Deputy Chief Manager (Admn), Secunderabad Branch. He speaks of the claims made by the appellant/delinquent. M.E.1 to 5 were marked through him. M.E.1 is the T.A. Bill submitted by the appellant/delinquent. M.E.2 to M.E.5 are the enclosures to the T.A. Bill. M.W.2 is

M.R.Krishna, Chief Officer, Regional Officer, Visakhapatnam Divisiion. He speaks of the distance between Visakhapatnam Railway Station and Brindavan Lodge and so also the distance between Brindavan Lodge and various other places, which the appellant/delinquent visited during the share mobilization programme. M.W.3 is Satish H.Joshi who conducted investigation with regard to the claims made by the appellant/delinquent and submitted report. Exs.M.E.6 to M.E.8 were marked through him. The findings of the Inquiring Authority are as follows:

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" FINDINGS:

a. Taxi fare from residence to Secunderabad Rly Station &

b. Viii) Taxi fare from Secunderabad Rly Stn to residence.

33. The management has not directly proved that the taxi fare from residence to Secunderabad Railway Station and vice versa is inflated. The PO has taken the rates of Visakhapatnam and extended them to Hyderabad. In fact he has stated in his written brief that it would not be possible to verify whether the CSO stayed at Gachibowli in February 1997 or not. The CSO has stated in the course of the industry that the flat occupied by him in Feb 1997 was under Bank's subsidized housing scheme for officers. Hence, it should have been possible for the management to find the genuineness of this claim of the CSO. As the management has neither produced witnesses nor documentary evidence to prove the charge,I treat these charges as not proved.

Taxi fares at Visakhapatnam:

(b) (i) & (vii) Railway Stn to Lodge and Lodge to Rly Stn

34. According to ME-6 and ME-7 the taxi charge for one way from Visakhapatnam Railway Station to Lodge Brindavan in September, 1997 after revision of the fares was Rs.70/-. In that case the taxi fare in February 1997 should have been less than Rs.70/- or at the most equal to Rs.70/-. The CSO has claimed Rs.150/- for one way and Rs.160/- for the return. Hence, I treat the charge of inflated claim against the CSO as proved.

(b)(ii) & (iii) Lodge to customer's house and back

35. As indicated in the analysis of evidence, the taxi fare payable for this travel is Rs.180/- whereas the CSO has claimed Rs.420/-. Hence, I treat the charge of inflated claim as proved.

(b)(iv) and (v) Lodge to Isukatota(Sand Bazar) and back

36. In the same way the taxi fare payable for this travel is Rs.180/-. However, the CSO has claimed Rs.400/-. In view of this I treat the charge of inflated claim as proved.

(b)(vi) University Campus to SSI branch and back to Lodge

37. As discussed in the preceding paragraphs, the taxi fare payable for the travel is Rs.180/- whereas the CSO has claimed Rs.215/-. Though there appears to be some inflation in the claim, I tend to give the benefit of doubt to the CSO and hence treat the charge as not proved.

© Bill for lodging and boarding for 2 days

38. As discussed earlier the defence exhibit DE-4 is not a reliable document for the reasons mentioned therein. The room rent should have been Rs.52/- per day in Feb 1997, on the basis of the depositions of MW-II and MW-III and also ME-8. Whereas the CSO has claimed at the rate of Rs.250/- per day. Hence, I treat the charge of inflated claim towards lodging charges by the CSO as proved. However, as discussed earlier, as the boarding charges that can be claimed without production of bills/receipts are equivalent to halting allowance I am dropping the charge of fabricated inclusion of the boarding charges in the bill.

d. Claim for 2 days Halting Allowance:

39. While the total absence of the employee from the Headquarters is within 3 blocks of 24 hours, he has claimed halting allowance for 4 days – 2 days actual and two days lumpsum. Also when the rate of halting allowance applicable to Visakhapatnam is Rs.150/- per day, he has claimed at the rate of Rs.175/-. Hence, I treat the charge of wrongful/inflated claim of

halting allowance against the CSO as proved."

14. Admittedly, the appellant/delinquent stayed in Brindavan lodge for two days i.e. on 23.2.97 and 24.2.97. To prove that the appellant/delinquent inflated the charges incurred by him in his T.A. bill, the management relied on ME6, ME7 and ME8. These documents were marked through MW.3 Satish H.Joshi (Investigating Officer). ME6 is Photostat copy of cab tariff issued by Shiva Shakti Taxi Service w.e.f. 10-9-97. ME7 is the Photostat copy of cab tariff issued by Shakthi Hanuman Taxi Service w.e.f. 10-9-97. The relevant period covered under the charge memo was from 22.2.97 to 25.2.97. It can be said without any controversy that ME6 and ME7 do not relate to the period covered under the charge memo. We make ourselves very clear that the Enquiry officer has recorded a finding basing on ME.6 and ME7 that the appellant/delinquent inflated the traveling expenses. Moreover ME6 and 7 are in the nature of pamphlets containing the tariff and no person from the concerned taxi service was examined. When ME6 and ME7 do not relate to the period covered under the charge memo, they cannot be based to arrive at a conclusion that the appellant/delinquent inflated the amounts spent by him towards traveling expenses. ME8 is the letter said to be given by the proprietor of Brindavan lodge. The Investigating officer who has been examined as MW.3 claimed to have collected ME8 during the course of investigation. The appellant/delinquent seriously disputed ME8. The management did not examine the person who has given ME8 or any one connected with the said lodge to prove the contents of ME8. Therefore, it cannot be said that the management proved the contents of ME8. The findings recorded by the Enquiry officer are based on no evidence. It has been held by the Apex Court in SHER BAHADUR Vs. UNION OF INDIA that the mere fact that the enquiry officer has noted in his report, "in view of oral, documentary and circumstantial evidence as adduced in the enquiry", would not in principle satisfy the rule of sufficiency of evidence. Once ME6 to ME8 are discarded there is no other evidence to prove that

the appellant/delinquent claimed inflated amounts spent by him towards traveling, lodging and boarding charges and halting allowance.

15. The appellant/delinquent without exhausting the remedy provided under Regulation 17 of Bank of India Employees (Discipline and Appeal) Regulations, 1976 filed W.P.No.14786 of 2001. The said writ petition came to be disposed of on 20.7.2001 directing the appellant/delinquent to exhaust his alternative statutory remedy by filing an appeal under Regulation 17 of Bank of India Employees (Discipline and Appeal) Regulations, 1976 and suspended the penalty/ punishment for a period of six weeks. The appellant/delinquent filed an appeal, which ended in dismissal on 30-8-2001. In these circumstances, the appellant/delinquent is not entitled for back wages and other monetary benefits.

16. In the result, this Writ Appeal is allowed setting aside the judgment of the learned single Judge dated 27-09-2001 passed in W.P.No.18372 of 2001. Consequently, the penalty of compulsory retirement inflicted on the appellant/delinquent is hereby set aside. But, in the circumstances of the case the appellant/ delinquent is not entitled for back wages and other monetary benefits from 30-8-2001 (the date of disposal of the appeal by the appellate authority) to the date of judgment in this writ appeal. The appellant shall be reinstated into service within a period of four weeks from the date of receipt of a copy of this judgment. The period between the date of compulsory retirement and reinstatement shall be treated as on duty for all purposes including pensionary benefits and for promotion. In case the appellant was paid the retiremental benefits in pursuance of the punishment, the same shall be refunded by the appellant. No costs.

Tnb

Dated: 03-09-2004 (G.Bikshapathy, J)

(B.Seshasayana Reddy, J)

To

1 The Chairman and Managing Director, Express Towers, Nariman Point Mumbai.
2 The Asst.General Manager, Bank of India, PTI Buildings, AC Guards, Hyderabad.
3 The General Manager (HRD), Bank of India, Express Towers, Nariman Point, Mumbai.
4 The Zonal Manager, Bank of India, PTI Buildings,AC Guards, Hyderabad.
5 The Zonal Manager, Chennai Zone, Bank of India, Chennai.

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